

## **Review the provisions and conditions of the lease of movable and immovable property (Case study: Legal analysis of leases from the perspective of Sheikh Tusi Almabsout book)**

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### **Abstract**

Author of this essay has based the text by Shaykh Tusi in third volume of the book Al-Mabsut concerning leases for his/her Islamic jurisprudential scrutinization and analysis and has mentioned the requirements and injunctions of hiring a person for a specific job and has scrutinized its Islamic jurisprudential documents such as Quranic verses and the Islamic narrations and consensus. Firstly, he has scrutinized the religious injunctions and the requirements of a specific hired person and the common hired person from Tusi's point of view. Secondly, he has considered the Islamic injunctions on hiring a personal or movable property such as hiring a beast of burden and books and drachma and denarius and so forth and the immovable properties such as land and house and so forth and has exploited and deduced the Islamic jurisprudential permits of these kinds of leases from the book Al-Ejarat by Shaykh Tusi and has mentioned its jurisprudential evidence. Thirdly, he has mentioned the requirements of guaranteeing the hired person in case of wasting the subject of hire by encroachment and waste and does not considers the hirer and the subject of hire liable and mentions its evidence in proportion to the discussion.

**Keywords:** Lease, Sheikh Tusi, Almabsout, Movable property, Immovable property.

### **Introduction**

Nowadays human being concludes various contracts to achieve his/her desires until throughout them meet his/her needs. In this vein one of the main contracts is the contract of lease.

Lease according to the Quranic verses means people. Seyyed Mortaza by alluding to a word by Imam Ali (peace be upon him) about earning a living by the people refers to it on which Imam Ali says on lease: God, the Almighty, said:

We distributed the daily bread for the mundane life among people and gave some people supremacy over others until some people hire others to serve and God's mercy is better than what they collect.

### **Research questions**

In order to achieve a better comprehension of the subject of lease from the book Al-mabsut the author of the essay makes it his/her duty to answer three questions which are being raised in three pivotal aspects. These three questions are as follows:

1-What are the requirements of hiring a person for a specific job and what is its Islamic jurisprudential evidence?

2-What is the Islamic jurisprudential evidence for hiring the movable and immovable properties and what are their jurisprudential evidence?

3-What are the requirements of guaranteeing a hired person in case of wasting the subject of hire by encroachment and waste and without them and what are their jurisprudential evidence?

### **Review of literature**

1-Karimi, Keyhan, Faculty of Divinity, Ferdowsi University, Mashad in the year 1996 in his MA thesis proposal has got into scrutinizing the title of lease in the Imamah jurisprudence and the civil law which has explained about the contract of lease, the subject of hire, fee, interest, liabilities, hiring a person and animal, goodwill, mortgage, and lease.

2-Khojaste, Madjid, Faculty of Divinity, Ferdowsi University, Mashad in the year 2004 has got into scrutinizing the conventional methods of mortgage and lease from Islamic jurisprudential and legal point of view and explained about the views on mortgage and lease in the convention of the society which are alien to jurisprudential interpretations and has gone into discussing about the subject of mortgage and its popular kinds such as interest-free or beneficence loan (Qard al-Hasanah).

### **Definition of Lease**

Lease: Views of Islamic jurists on lease is as follows: lease is a kind of contract about possession of a definite interest or privilege against a definite compensation.

### **Pillars of Lease**

Lease is made up of three pillars which consist in: Firstly, contract, and secondly, sides of the contract, and thirdly, the exchanged goods under the contract.

### **Requirements and Islamic injunctions of lease**

1-Benefiting from subject of hire or the survival of it be possible.

2-subject of hire may be assumed or joint.

3-subject of hire may be a concrete object or a general entity.

4-Lessor should be the owner of the privilege which confers throughout the contract of lease.

5-the subject of hire should be definite.

6-the privilege of the subject of hire should be legitimate and legally permissible.

7-Authority and power to submit the subject of hire equals the power to submit the subject of contract as the fundamental condition for the accuracy of the whole transactions.

In the subject of hiring a person there are two kinds: hiring in a specific manner and hiring in a general manner and in other words the hired person is of two kinds: specific hired person and common hired person.

### **Specific hired person**

“Specific hired person” is one who undergoes the contract of hiring for somebody for a definite period in a way that all of his/her privileges go to the hired person or a specific privilege of his/her service goes to the hired person.

### **Common hired person**

“Common hired person” or in other words “joint hired person” is one who undertake to do something who according to the terms of this contract of lease neither the superintendence of the hired person is a condition of the contract nor it has a definite term.

### **Religious injunctions and the requirements of hiring the movable and immovable properties and their Islamic jurisprudential evidence**

The author of this article is going to determine the condition of definiteness the exact property and its privilege since achievement of these two conditions for actualization of concluding the contract of lease is necessary and lack of these two conditions equals the cancellation of the contract of lease.

### **Conditions of leasing the subject of hire**

And if a subject from among subjects of leasing got hired it has one of the two cases either it is the building of the proprietor and/or something other than it. Then in case the property or the building is the subject of lease such as a store or a house or a land it is executable only after achieving the two permissible conditions of the contract. Firstly, the subject of lease should be definite and secondly it

should be defined personally and/or it can be observed and then the lessor should determine it. Then the four limits or boundaries of it should be determined until the limitations and the amount of area which is being leased personally got determined and explained and its privilege should be determined by measuring since it is not possible to observe it and it cannot be measured by means of scales and based on kind and weight but it becomes determined throughout measuring the time.

Then if the contract coincide with the beginning of the month that day is the criterion and if he/she lease or let it for a term of one year then the term of lease is up to the time of observing the crescent of the next month whether it be the full moon or the new moon and if the contract does not coincide with the beginning of the month the criterion is determination of the time by number and if a one-month term is being passed he/she has vindicated all of his/her rights and in this case there is no discordance among religious jurists. And if they don't deliver them and in case it is in his hand or and its time of delivery expire the contract will be cancelled in comparison with the time that has passed from what is being inserted in the contract since the object of contract

Has been wasted before achieving and the decree or verdict in the rest of the contract is correct and some of the religious jurists have told that the contract is not correct or authentic in comparison with the terms which have remained in the contract and some of them have told that the contract is correct in comparison with what has remained and the side of the contract has an optional right.

And the lease of a non-property or non-property rental and the buildings such as lease of beasts of burden, mule, and camel and donkey and cows/bulls, etc. can be brought under the named or styled contract of lease and the obligatory contract of lease since these things are permissible they can be done as an obligation in the purchasing. Also, in lease we can do the same thing and for the immovable property since its location should be determined as it differs in proportion to the location and because determination and identification in the immovable property is the purpose. Thus, it is impossible to lease the immovable property throughout an obligatory contract.

Since the lease by assuming the absent profit is not permissible then if it would be impossible to determine the lease per se, it should be determined during a definite period.

Thus, if the amount of determined time is the criterion for determining the verdict or condition of lease as it was mentioned before in the subject of immovable properties and any time that the time of lease is out of alignment with determining the time it is not permissible to measure it and it is measurable per se; since lease is a lesion or loss and measuring the interest is also a loss and if the loss adds up to another loss it causes the prohibition of the permit of the contract.

### **Haste, the requirement of the importing the contract**

And if the above-mentioned conditions become proven and the contract become taken into consideration in an absolute manner we lay the foundation on haste and if in the contract haste is being inserted the contract is cancelled since the contact is being concluded for a definite time and the condition of delay is not permissible in submission and if the condition of delay is not inserted in the contract but submission occurs on behalf of the side of the contract after a delay then the object of contract returns to its first place and nothing will be subtracted from it due to the passage of time.

### **Conditions of hiring the beasts of burden in an obligatory manner**

This is in practice if the rent is definite and the interest is proportionate to the amount of determined time or action and if the lease is obligatory for instance somebody says I have hired a beast of burden from you for riding and mentions its conditions in a way that its material and kind and other characteristics be mentioned exactly, such a contract is permissible and they are bound to deliver the beast of burden according to the conditions and characteristics which have been inserted in the contract.

### **Advance permit for the exterior property**

Then if the interests are being changed into the advance payment it involves an expounded view. Then if the contract is being concluded under the title of advance payment the requirement of its actualization is receiving the fee at the time of contract and if the contract is being concluded orally in this case it has two aspects: The first view is that the property should be received in the contract session as an advance payment contract and secondly is that receiving is not the condition and oral conclusion is not valid while the word of lease is being used.

Advance payment is the condition in which the price of contract is being paid right away and the article will be delivered later on which is also called forward sell.

#### **Conditions of guarantee the hired person in case of wasting the subject of hire by encroachment and waste**

#### **Conditions of guarantee an object by the hired person**

If something which is in the hand of maker gets wasted then it involves an expounded view and if he/she hires a property and then take it to his/her estate such as home or store and so on and carry it to do something and it get waste in the hand of hired person without any yielding like robbing a property or if it catches fire and burns in this case no guarantee or responsibility goes for the hired person since while the property is in the hand of hirer it is under the control of him/her and if the property gets wasted in his/her hand its guarantee goes to no other one except for the hired person from whom a benefit is produced.

#### **Islamic jurisprudential analysis**

One of the known Islamic jurisprudential rules is the rule of "lack of guarantee on behalf of the trustee except for encroachment and waste". According to this rule the trustee is not responsible unless in case of encroachment and waste. The hirer and the hired person are also considered as trustee. News and Islamic narrations concerning this issue totally refer to the lack of guarantee on behalf of the trustee and

guarantee means a real warrant; that is if the property wastes in case it is one of the exchangeable goods between people even by quarrel then a copy of it should be paid and if it's a property that is being exchanged with the mutual agreement its cost is up to the trustee.

One of the key questions is the conditions of guaranteeing the hired person in case of wasting the hired property which is one of the accents of the Islamic jurisprudence and regulations in which the guarantee to do it is not just the government and its force majeure thus the answer to this question can be easily perceived from Islamic narrations and the sayings of the Islamic jurists. Basically, ownership of the hirer is a trust ownership. For instance, you consign a property to somebody as a trust or deposit or have rented it. In this case that person is considered as a trustee and the trustee is not responsible unless he/she is a scape goat. If without his/her fault the property gets waste he/she is not responsible and the hirer is in the position of the trustee and any kind of harm which arises to the home if its origin is the negligence of the hirer he/she is responsible.

Talkhis-al-maram fi Ma'rafat al-ahkam has clearly stated this rule: the hirer is not responsible for the exact property unless any negligence or waste happens in its case and based on one verdict even he/she places a guarantee for it and if the property wastes in his/her hand but he/she was not the cause of it he/she is not responsible and the hired person is not responsible for its waste.

Shahid-e-Sani in the book Al-rozat albahiyah fi sharh al-Lumáh al Damashqiyyah has stated this point: The hirer is not the exact responsible unless any encroachment and waste occurs since it has been achieved by owner's permission.

Bahrani in the book Alhadaeq al-Nazerah fi ahkam al etrahal-taherah quotes that: Apparently in this issue there is no disagreement which the exact hired property such as beasts of burden and so on are trusts in the hands of trustee and during the term of hiring the hirer is not responsible unless any encroachment and waste occurs and it's because the permission of the owner is being achieved so there is no guarantee unless any encroachment or waste occurs.

Vahid Behbahani in his *Resalah amalieh Motaájer* also states that: the subject of hire in the hand of hirer is a trust and he/she is not responsible unless due to encroachment or waste neither in the period of hire and nor after that until it is in his/her hand but not as usurped property for example if he/she does not return it to the owner as an exchange for his/her debt.

Kashif al-Ghita in his book *Safinat al-Najat* and *Meshkat alhoda* and in *Mesbah alsaadat* also writes: the subject of hire in the hand of hirer and the exact property in the hand of hired person are both trusts and in case of wasting or defect he/she is not apt to bring about liability unless an encroachment or waste occurs.

### Conclusion

After the translation and explanation and analysis of the book *Alejarat* by Shaykh Tusi some conclusions have been achieved in this case that the author mentions some of them after deduction:

The known definition of the latest jurists is that hire is defined as the possession of the benefit or concluding a contract with a definite side. Hire like purchase is a possessing gratuitous agreement. When the hire or lease is one of the contracts it follows the regulations and rules of other contracts like purchasing contract.

Since lease is one of the contracts the sides of the contract should possess the qualifications of the accuracy or validity of the contract. Since acquisition of the interests for the hired person without submitting the subject of hire is not possible forcible the subject of hire although it is not directly the case for hiring but achieves the title of hiring case; thus, the jurists have decreed some requirements for each of the exact property and its benefits and the sides of the agreement as beneficiaries which without them requirements of lease won't be correct.

Contract of lease is like the contract of unconditional purchase and between the sides of contract and their Islamic jurisprudential vicor is necessary to exercise unless according to the consent of the sides of the contract or due to the Islamic jurisprudential reasons it gets null and void. Thus, the contract of lease like the purchasing contract is one of the necessary

contracts and until it has not expired the sides of the contract have no right to cancel it.

Reasons for proving and the legitimacy of the contract of lease are as follows:

#### 1-Quranic verses and the Islamic narrations

For the legitimacy of the certain value of the lease two Quranic verses have been used:

1-Verse number twenty six from Surah Al-qisas.

2-Verse number twenty seven from the same Surah.

By alluding to the above two Quranic verses on the legitimacy of the lease in the previous conditions besides the authenticity of the lack of being null and void and getting used to and alluding to the rule of 'civilization by nature' and the requirement to this transaction to protect the kind legitimacy of the lease in Islam is being alluded and deduced and also it has been alluded to the second Quranic verse on the necessity of the registration of the practice and the duration or other regulations and also not only to the authenticity of the dual action but also to hiring the sides of the contract of marriage and the marriage portion and for the wife.

#### B-consensus

All the Islamic jurists have consensus on the legitimacy of the lease and the author of this essay believes in the legitimacy of this regulation since the believers of the whole Islamic sects hire some individuals to meet their needs and/or hire their properties.

#### C-The conventional procedure

In the whole logical societies the actualization of the contract of lease is being endorsed and the logical foundation among all nations follows this. Moreover, the general or common interpretations of the Quranic verses and the Islamic narrations refer to it.

The rule of "Lease as a vital principle of life" had due to it the contract of lease are among the vital subjects of Islamic jurisprudence. This rule and due to it the contract of lease are under the title of exchanges and in the Islamic shariah and religion it is fixed and according to the Islamic rule it undergoes some consequences and explanations for example if the contract of lease based on the correct requirements become concluded the hirer is the

owner of the exact benefits of the subject of hire and the lessor is the owner of the action of the hired person. The subject of contract should not be vague unless in the specific cases in which having superficial knowledge of it is sufficient.”

Definiteness of the amount of the lease is through determining the duration and/or the action and the way of it is through measuring the validity of the nature of subject of lease differs. The subject of lease can be a thing or an animal or a human: In hiring an animal it is possible that the amount of interest will be determined based on the duration as in hiring the things it is possible that the amount of the interest be determined based on the distance. In the Islamic jurisprudence as it has been explained in the whole Islamic jurisprudential books hiring a person is of two kinds: Specific hired person and common hired person. Cancellation of the contract of lease due to the death of either the hirer or the tenant undergoes the discordance of the Islamic jurists and they have three views:

Firstly, cancellation of the contract of lease due to the death of any side of the contract (i.e. hirer or the lessor) is the common saying among the old Imamah sect jurists.

Secondly, cancellation of the lease due to the death of the tenant and the lessor which is the common saying among many of the Imamah jurists.

Thirdly, lack of absolute cancellation of lease.

Kinds of lease: From Tusi’s point of view lease from one aspect is of two kinds: 1-definite, 2-under somebody’s obligation. The definite lease is that a person rents his/her house or slave for a year or less than that and the person under his/her obligation is the one who hires somebody to do a specific job for his/her owner that if due to encroachment and/or waste destroy it he/she is responsible otherwise he/she is not responsible.

Reasons for the cancellation of the contract of lease are as follows:

1-Cancellation. 2-The exercise of any kind of fixed options in the lease. 3-Death of one side of the contract according to the known view of the previous generations but the known view of the descendants is lack of cancellation of the contract due to the death.

4-Wasting of the subject of hire before delivering it to the hirer or after its delivery and before using it.

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